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UNCLAS SECTION 01 OF 06 BRASILIA 002253

SIPDIS

SENSITIVE

STATE FOR WHA/BSC, EB/TPP/MTA/IPC SWILSON
STATE PASS TO USTR FOR SCRONIN, LYANG, BPECK
USDOC FOR
4322/ITA/MAC/WH/OLAC/WBASTIAN/JANDERSEN/DMCDO UGALL/DRSICOLL
USDOC FOR 3134/USFCS/OIO/EOLSON/DDEVITO
TREASURY FOR OASIA SEGAL
NCS FOR DEMPSEY

E.O. 12958: N/A
TAGS: **KIPR ETRD ECON BR**
SUBJECT: GSP/IPR: BRAZIL'S EMERGING INITIATIVES

REF: (A) BRASILIA 2150 (B) BRASILIA 2017

11. SENSITIVE BUT UNCLASSIFIED; PLEASE TREAT ACCORDINGLY

12. (U) The announcement on June 30, 2004 to extend review of the possible withdrawal of trade benefits from Brazil under the Generalized System of Preferences, and the closing of the Congressional Investigative Commission (CPI) on Piracy on August 11 (ref a) have heightened public debate and led to work on new GoB initiatives to combat piracy. Below provides an overview. While some of the initiatives are not fully formed, the information provides some sense of the direction in which the GoB is moving; details are expected to be revealed during the second meeting of the bilateral IPR Working Group September 9-10 in Washington (ref b).

National Council for the Defense of Intellectual Property and the Fight Against Piracy

13. (U) In a formal ceremony on August 12, Deputy Medeiros led the CPI on Piracy in presenting the Commission's final report to President Lula, who was flanked by Minister of Political Coordination, Aldo Rebelo, and Minister of Justice Marcio Bastos. President Lula did not speak, but Minister Bastos used the occasion to announce the first of the GoB initiatives flowing from the CPI report, formation of a public-private sector National Council for the Defense of Intellectual Property and for the Fight Against Piracy. Deputy Medeiros has reportedly been working closely with the private sector and the Ministry of Justice on drafting the decree to establish the Council. (Note: During an Information Technology forum in Sao Paulo August 10, a private sector contact told Consulate Econoff of the upcoming announcement and claimed the GoB was expediting establishment of the Council out of concern over the potential loss of GSP trade benefits.) See para 16 for an unofficial Embassy translation of the decree's initial draft.

14. (SBU) Although the decree is not yet final, Ambassador Portella, Bastos's International Advisor, told Econoff in a meeting on August 23 he expected President Lula to sign it by the September 9-10 IPR Working Group meeting. He said the final decree would not vary greatly in substance from the initial draft, the main hold-up being related to a mechanism for selecting private sector participants. According to Portella, the new Council represents a significant improvement over the ineffectual Inter-ministerial Committee on Piracy, which will be dissolved with the Council's formation. He claimed that to ensure clout, the rank of council members would be significantly higher, probably from within the first or second rung below minister; Committee members hailed only from the working-level.

15. (SBU) In contrast to the Committee's many-paged, vague workplan, Portella also said the Council's work will be much more focused. The decree directs the Council specifically to: elaborate a national policy for defending intellectual piracy and fighting piracy; create and maintain a national database, integrated into the Unified Public Security System for better coordinating enforcement at the federal, state and local levels; and propose specific enforcement actions, including special operations and investigations, and mechanisms for more effectively combating piracy. He also noted private sector participation within the Council as an improvement; the draft decree provided for three civil society representatives, but private sector has been lobbying the Ministry to increase the number of seats to five. (Note: At Deputy Medeiros' urging, on August 30, representatives of copyright industries -- audiovisual, music, software, books and the Institute for Ethical Competition -- formed the Permanent Forum of Entities in Defense of Intellectual Property, Combat of Piracy, Contraband, and Tax Evasion, which they hope will be the forum for selecting the private sector representatives to participate in the Council.)

16. (SBU) During the first IPR Working Group meeting in Rio de Janeiro August 5, GoB officials asserted that domestic action alone could not curb piracy given the magnitude of contraband flowing into Brazil from its neighbors (ref b). At that time, they noted GoB plans to press for regional action by interjecting discussions on piracy into Mercosul deliberations during Brazil's time as the group's president pro tempore. Following thought on this, piracy and the search for collaborative efforts to address the problem region-wide are being discussed as part of a Mercosul (plus Associate Members) meeting September 1-3 in Manaus, Brazil of officials from Interior and Justice Ministries and Customs services. The group is charged with developing concrete actions for approval during a Ministerial slated to take place November 19 in Brasilia.

Paraguay

17. (SBU) Cooperation within Mercosul will probably focus on bilateral projects with Paraguay. According to Ernani Checcucci, Coordinator General of the Customs Administration within the Ministry of Finance, there have been bilateral initiatives in the past, but that effort is being stepped-up. The GoB is considering changes to the "free customs transit" which provides inspection-free transit for containers passing through Brazilian territory from the Brazilian Port of Paranagua to the Paraguayan border. Initially agreed to provide port access to Paraguayan exporters, this open channel has turned into a major corridor for merchandise moving into Paraguay for future smuggling into Brazil via the mass movement of trucks, buses and motorcycles over the Friendship Bridge linking Ciudad del Este in (P) and Foz do Iguacu (B). Portella noted that the volume of virgin CDs moving through this corridor far exceeds Paraguayan consumption, leading the GoB to conclude that they are destined for illegal transport into Brazil.

18. (SBU) On August 26, during a visit to Brasilia of Paraguayan President Nicanor Duarte, President Lula directed his economic team to within 30 days find a formula for financially assisting Paraguay to the tune of \$25 million to \$55 million for social dislocation (unemployment) associated with bilateral projects for fighting piracy. In an August 30 conversation with Econoff, Checcucci said the GoB is cognizant of the potentially explosive social reaction in Ciudad del Este should there be an immediate, severe clamp down on piracy and smuggling. He explained that the GoB's goal is to work with Paraguay to "formalize" the Ciudad del Este economy, moving people away from smuggling toward legal commerce.

Customs

19. (U) Brazil's Customs service has an array of projects underway to improve its ability to control commerce moving across the border. These have principally been prompted by USG security requirements post-9/11 and by GoB interest in improving the collection of import duties, but many serve anti-piracy interests as well. According to Checcucci, the initiatives can be grouped roughly into three categories: (1) combat contraband, smuggling, and piracy; (2) regularize the assessment of duties and combat trade fraud; and (3) negotiate international customs assistance and cooperation agreements. For some of these initiatives, customs is still in the process of securing a GoB budgetary commitment, and in cases involving organizational changes, approval of the Planning Ministry. Below is a sketch of the specific Customs initiatives and their expected timelines within each category.

11. Combat contraband, smuggling, and piracy
1) Establishment of a National Plan for Customs Security (2004-2007);
2) Establishment of a computerized system for declarations and movement of cargo (Siscomex for Ports) (2004-2005) (enhances 1997 Siscomex trade flow registration system);
3) Establishment of a Computerized System for Control of International Passengers (2004);
4) Restructuring of physical facilities, automation of transit controls, and separation of traffic across the International Friendship Bridge (Foz do Iguacu-Ciudad del Este (2005-2006);
5) Creation of specialized enforcement customs units. (These specialized units would operate in the interior of the country; customs already has the authority to seize goods smuggled into the country.)

12. Regularize the assessment of duties and combating trade fraud
1) Creating Program for Fiscal Regularization: sets up a system whereby established trade operators may register with the service and once establishing legitimacy become eligible for a speedier customs clearance process (enabling Customs to focus efforts on more questionable movements);
2) Establishment of a computerized system for risk assessment and inspection selection (2004); incorporation of artificial

intelligence software into the computerized system to enhance its operation (2005-2007);
3) Taking customs documents on-line (2004-2006);
4) Second phase of Siscomex integration with the addition of information from state finance authorities (2005);
5) Combat against customs fraud: registration of foreign suppliers (electronic invoices); establish process for official investigation on import valuation -- requires legislation (2004-2005).

¶3. Negotiate international customs assistance and cooperation agreements

- 1) Conclusion of bilateral customs agreements (2004-2007). Target countries: China, South Korea, Taiwan, Hong Kong, India, Italy, Germany, Israel and Bolivia.
- 2) Integration of other countries' electronic customs systems into Siscomex: Phase I (tests): Argentina and Paraguay; Phase II: Other South American countries (2004-2007); Phase III: Others.

¶10. (U) To justify the expenditure of additional resources for its initiatives, Customs claims these projects will result in substantial savings for the government. They estimate that the first activity (combating contraband, smuggling and piracy) would yield an annual rate of return of 490 percent; the second (regularizing the assessment of duties and combating trade fraud), would yield an even higher rate of return of 2,854 percent.

Agreement with Interpol

¶11. (SBU) Following a presentation by John Newton of Interpol's IP Crime Unit during the Brazilian Intellectual Property Association's (ABPI) 24th National Seminar August 18-19 in Brasilia, a private sector contact informed Econoff that the Ministry of Justice was working to form an agreement with Interpol for greater cooperation on piracy, including the stationing of a Federal Police officer in Lyon. However, on August 23, Ambassador Portella could not confirm this.

Public Debate

¶12. (SBU) Less than a week after the CPI on Piracy concluded its work and presented a final report to President Lula, the ABPI hosted its two-day National Seminar on Intellectual Property. With over 550 participants representing some 26 countries, the seminar was a major platform for private sector and government debate. What was striking was the consistent message from presenters -- for Brazil to attain its economic development goals, as a government and as a society it must protect intellectual property. Broadly speaking, there were two elements to the argument: (1) sustainable economic development will to a large extent depend on creativity and technological innovation, which in turn requires a system in which intellectual property rights are assured; and (2) the economic informality and the pervasive crime, both street and organized, associated with piracy endangers the country's economic base and foundation on the rule of law, creating an untenable basis for economic development.

Government Reaction

¶13. (SBU) A notable exception was the more defensive posture presented by Brazil's Ambassador to Geneva Luiz Felipe de Seixas Correa and the Foreign Ministry's Director for International Trade Negotiations Ambassador Regis Arslanian; both said IPR interests principally belong to developed countries. Seixas Correa for instance stated categorically that TRIPs had hurt developing countries, although he quickly added that Brazil is not seeking to secede from the Agreement. Arslanian portrayed IPR as one, if not the, stumbling block in Mercosul negotiations with the EU and United States. In particular, he complained that the EU and U.S. are unreasonably pressing resource-strapped Mercosul to commit to a 100 percent enforcement rate. Interestingly, neither mentioned the GSP/IPR review.

¶14. (SBU) Certain private sector contacts have also noted that their Ministry of Justice and Customs interlocutors are displaying much more interest and earnestness in discussing new initiatives for combating piracy than the Foreign Ministry, the one responsible for compliance with international obligations. It may be that the former institutions welcome the focus that the CPI report, and even the GSP review, provide to the issue, helping them justify additional resources and gain political backing for undertakings they independently deem as important, whether it is improved duty collection or tools for better fighting organized crime.

¶15. (SBU) Despite institutional wariness on the subject, the Foreign Ministry members of the IPR Working Group have by all accounts been diligently assembling what they view as a comprehensive report of GoB efforts to combat piracy, which they will present during the September 9-10 meetings in Washington. This report, which is being translated into English, will focus on activities over the last year. In a

converstaion with Econoff September 3, Otavio Brandelli and Henrique Moraes of the Ministry's IPR Division said there is some concern that the Council decree will not be final by the meeting date, raising a question about whether or not they will provide the written text at that time or later, once information on the decree is available. In any case, they plan to present whatever information is currently available.

116. (U) Unofficial Embassy translation:

Decree no. of July , 2004
Regulates Creation of the National Council for the Defense of Intellectual Property and the Fight Against Piracy

The President of the Republic, using the authority vested in him by art. 84, item IV of the Federal Constitution,

DECREES

Article 1: Creates the National Council for the Defense of Intellectual Property and Fight against Piracy, organ of collective deliberation, mixed composition, reporting to the Ministry of Justice.

Article 2: The Council has the objective of elaborating proposals and structuring a national policy for the defense of intellectual property and the fight against piracy as well as:

I - study the phenomenon of piracy and propose effective measures to adequately confront the problem, as well as actions for the protection of intellectual property in Brazil;

II - propose measures for the defense of intellectual property and the fight against piracy;

III - create and maintain a national database on the subject, integrated into the Single System of Public Security (SUSP);

IV - study and support measures for the introduction of the fight against piracy to the States of the Federation by means of the Unified Public Security System (SUSP);

V- encourage and support planning of special operations and investigations;

VI - suggest mechanisms to combat the entrance of illegal products and control the entry of legal products that can be used in the practice of piracy;

VII - suggest specific inspections in ports, airports, borders and Brazilian roadways;

VIII - encourage and promote the training of public agents involved in operations and processing of information related to piracy;

IX - prepare statistical data with the objective of establishing efficient mechanisms for prevention and fight against piracy; and

X - encourage or coordinate educational campaigns about the defense of intellectual property and the fight against piracy.

Article 3: The Council will consist of the following:

I One representative from the Ministry of Justice;
II One representative from the Ministry of Finance;
III One representative from the Ministry of Foreign Affairs;
IV One representative from the Ministry of Development, Industry and Foreign Commerce;
V One representative from the Ministry of Culture;
VI One representative from the Ministry of Science and Technology;
VII Two representatives named by the National Congress;
VIII Three representative from civil society, chosen from organizations involved in the defense of intellectual property and the fight against piracy, chosen by the State Minister of Justice;
IX One representative from the Federal Public Ministry
Sole Paragraph. Each organ mentioned in this article should determine members and substitutes who will be named to the Council by the State Ministry of Justice.

Article 4: The Council will have an executive secretary with responsibility for promoting government coordination for planning and action for the protection of intellectual property and the fight against piracy.

Sole paragraph. The Executive Secretary of the Council will be named by the State Minister of Justice and will have duties set forth in the regulations.

Article 5: The Ministry of Justice, through the National Public Security Secretary will provide technical and administrative support necessary for the functioning of the

Council.

Article 6: The members of the Council will not receive pay and their work will be considered relevant public service.

Article 7: The Interministerial Committee for Combating Piracy created by the March 13, 2001 Decree no longer exists.

Art. 8 This Decree goes into effect on the date of its publication, revoking the Decree of March 13, 2001.

Brasilia, of , 2004. 183rd of Independence and 114th of the Republic.

End unofficial translation.
Danilovich